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5 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6 6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
7 702.893.3383  
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8 Attorneys for Non-Party  
TOTAL IMAGING SOLUTIONS, LLC

9 UNITED STATED DISTRICT COURT

10 SOUTHERN DISTRICT, NEVADA

11 E-IMAGEDATA CORPORATION,

Case No: 2:15-CV-658-RTR  
Dept. No.:

12 Plaintiff,

13 v.

14 DIGITAL CHECK CORP. d/b/a  
15 ST IMAGING,

NON-PARTY TOTAL IMAGING  
SOLUTIONS, LLC'S. MOTION TO  
QUASH SUBPOENA SEEKING  
DOCUMENTS AND PMK DEPOSITION  
OR, IN THE ALTERNATIVE, TO MODIFY  
SUBPOENA'S SCOPE

16  
17 Defendant.

18  
19 COMES NOW Non-Party TOTAL IMAGING SOLUTIONS, LLC., (hereinafter "TIS")  
20 by and through its attorneys of record, Josh Cole Aicklen, Esq., and Brandon D. Wright,  
21 Esq., of LEWIS BRISBOIS BISGARRD & SMITH, LLP, and hereby moves to quash  
22 Plaintiff's subpoena seeking documents and TIS' Person Most Knowledgeable deposition  
23 or, in the alterative, to modify the subpoena's scope.

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1 This Motion is made and based upon the Memorandum of Points and Authorities  
2 submitted herewith, the affidavit of Brandon Wright, Esq., the affidavit of Terri Currier, the  
3 exhibits attached hereto, the pleadings and papers on file herein and in the underlying  
4 litigation and any oral argument and evidence permitted by this Court at the hearing on  
5 this Motion.

6 DATED this 25 day of July, 2016

Respectfully submitted,

## LEWIS BRISBOIS BISGAARD & SMITH

By

JOSH COLE AICKLEN  
Nevada Bar No. 007254  
BRANDON D. WRIGHT  
Nevada Bar No. 013286  
6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
Tel. 702.893.3383  
Attorneys for Non-Party  
TOTAL IMAGING SOLUTIONS, LLC.

1       AFFIDAVIT OF BRANDON D. WRIGHT, ESQ., IN SUPPORT OF NON-PARTY TOTAL  
2       IMAGING SOLUTIONS, LLC'S. MOTION TO QUASH SUBPOENA SEEKING  
3       DOCUMENTS AND PMK DEPOSITION OR, IN THE ALTERNATIVE,  
4       TO MODIFY SUBPOENA'S SCOPE

5           STATE OF NEVADA                              )  
6           COUNTY OF CLARK                              ) ss.  
7    )

8       I, BRANDON D. WRIGHT, being first duly sworn, depose and say:

9       1.       I am an Associate at LEWIS BRISBOIS BISGAARD & SMITH LLP, and am  
10      duly licensed to practice law in the State of Nevada. I am competent to testify to the  
11      matters set forth in this Affidavit, and will do so if called upon.

12      2.       I am an attorney representing Non-Party Total Imaging Solutions (TIS) as to  
13      E-IMAGEDATA CORPORATION'S (hereinafter "Plaintiff" or "E-IMAGEDATA) subpoena  
14      seeking TIS' production of documents and PMK'S deposition testimony arising from  
15      litigation between Plaintiff and DIGITAL CHECK CORP. d/b/a ST IMAGING (hereinafter  
16      "ST IMAGING") currently pending in United States District Court for the Eastern District of  
17      Wisconsin, Case Number 2:15-CV-658-RTR.

18      3.       I have knowledge of the matters contained herein except for those matters  
19      that are stated upon information and belief, of which I have reason to believe they are  
20      accurate.

21           A. Background of the Parties in the Underlying Litigation<sup>1</sup>

22      4.       ST IMAGING manufactures technical equipment designed to read and  
23      "digitize" aging microfilm, books and other "hard documents" housed primarily by  
24      educational institutions, large private institutions, hospitals, etc.

25           ///

26           ///

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28      <sup>1</sup> TIS and its counsel want it to be clear to the Court that they have no opinion on the veracity or the merits  
29      of E-IMAGEDATA and ST IMAGING'S Claims against each other. TIS merely summarizes their competing  
30      contentions so the Court can understand the background of the Wisconsin case.

1       5. ST IMAGING works with and relies on reselling companies (hereinafter  
 2 "resellers") across the country to sell, service, maintain and upgrade ST IMAGING'S  
 3 equipment and products.

4       6. E-IMAGEDATA also manufactures technical equipment designed to read  
 5 and "digitize" aging microfilm, books and other hard documents. Upon information and  
 6 belief, E-IMAGEDATA is ST IMAGING'S primary competitor, and these two companies  
 7 products comprise the vast majority of the total market share in the microfilm reader  
 8 industry.

9       7. E-IMAGEDATA has sold its ScanPro product line to the public since 2003.<sup>2</sup>

10      8. ST IMAGING'S ST ViewScan product line directly competes with E-  
 11 IMAGEDATA ScanPro product line.

12      9. E-IMAGEDATA advertises its ScanPro 3000 scanner as containing/utilizing  
 13 a 26 Megapixel Camera.<sup>3</sup> ST IMAGING considers E-IMAGEDATA "26 Megapixel  
 14 Camera" claim to be false and misleading because E-IMAGEDATA uses a 6.6 megapixel  
 15 camera/image sensor and employs a proprietary hardware/software process to enhance  
 16 the image's resolution, rather than using a "true" 26 megapixel camera/image sensor.

17      10. Upon information and belief, E-IMAGEDATA and ST IMAGING have placed  
 18 competing bids with various public and private agencies/institutions throughout the years  
 19 in order to sell their competing products. E-IMAGEDATA has compared its ScanPro  
 20 3000's image quality against ST IMAGING'S ViewScan III image (the ViewScan III uses a  
 21 14.3 megapixel camera/image sensor) after employing E-IMAGEDATA'S proprietary  
 22 hardware/software enhancement process to ST IMAGING'S ViewScan III's unenhanced  
 23 image.

24     ///

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25  
 26      <sup>2</sup> E-IMAGEDATA's ScanPro product line is an advance integrated desktop microfilm reader designed for  
 27 public use.

27      <sup>3</sup> Megapixels represent the quantity of data a camera/camera's image sensor can collect. Generally, the  
 28 higher the number of megapixels, the better/clearer an image appears.

1       11. Upon information and belief, E-IMAGEDATA protested a bid awarded to ST  
 2 IMAGING by the Department of the Interior, National Park Service (hereinafter "NPS")  
 3 which required a scanner to have a 25 minimum megapixel camera/image sensor.

4       12. Upon information and belief, E-IMAGEDATA and its resellers lodged a  
 5 formal protest of the award with the U.S. Government Accountability Office ("GAO")  
 6 alleging that E-IMAGEDATA'S ScanPro 3000 met the minimum megapixel requirement,  
 7 claiming it had a 26 megapixel camera.

8       13. Upon information and belief, the GAO rejected E-IMAGEDATA'S claim that  
 9 its ScanPro 3000 had a 26 megapixel camera because E-IMAGEDATA "knew that the  
 10 ordinary convention in the industry was to represent camera megapixels in terms of the  
 11 camera sensor itself" excluding proprietary hardware/software enhancing techniques.  
 12 See, GAO's decision, attached as Exhibit A.

13       14. E-IMAGEDATA claims ST IMAGING provided false or misleading marketing  
 14 materials regarding E-EMAGING'S ScanPro's 26 megapixel camera claim to its resellers  
 15 for distribution to the general public.

16       15. ST IMAGING contends, interalia, that their alleged statements and  
 17 characterizations of E-IMAGEDATA 26 megapixel camera claims are proper; that E-  
 18 IMAGEDATA'S 26 megapixel camera representations are false and misleading; and that  
 19 E-IMAGEDATA has made false and disparaging statements about ST IMAGING.

20       16. E-IMGING and ST IMAGING have filed claims and counter-claims against  
 21 each other alleging violations of the Lanham Act (15 U.S.C. § 1125), claims of Common  
 22 Law Unfair Competition, Deceptive Trade Practices and other causes of action, in the  
 23 underlying litigation currently pending in the United States District Court for the Eastern  
 24 District of Wisconsin, Case Number 2:15-CV-658-RTR.

25           B. Background Information About This Moving Non-Party

26       17. TOTAL IMAGING SOLUTIONS, LLC., (TIS) is a reseller of ST IMAGING'S  
 27 products. The vast majority of TIS business comes from selling ST IMAGING'S  
 28 ScanView line of products.

1       18. TIS was originally founded by Terri Currier and operated by Clifford and  
 2 Terri Currier as a husband and wife team. See, Affidavit of Terri Currier, attached hereto  
 3 as Exhibit P.

4       19. Terri and Clifford Currier later employed their son (Travis Currier) as a  
 5 1099 independent contractor. Id. Travis works for TIS as an independent contractor in  
 6 Southern California. Clifford and Terri worked for TIS primarily in Nevada and northern  
 7 California. Id.

8       20. Clifford and Terri shared in TIS' marketing and sales efforts throughout TIS'  
 9 operation and expansion. Id.

10      21. TIS' business address is 4525 Dean Martin Dr., Unit 1508, Las Vegas,  
 11 Nevada 89103. This is reflected on both the California and Nevada Secretary of State's  
 12 "entity information center." See, TIS Business Entity Detail for California, attached as  
 13 Exhibit B; see also, TIS Business Entity Detail for Nevada, attached as Exhibit C.

14      22. Travis is named as TIS' California "Registered Agent" while Terri is  
 15 identified as TIS' Nevada "Registered Agent" and "Managing Officer." See, Exhibits B  
 16 and C.

17      23. Terri does not regularly conduct business, in person, within 100 miles of  
 18 Costa Mesa, California.

19      24. On Saturday, June 18, 2016 Clifford Currier suddenly and unexpectedly  
 20 passed away. Clifford was 57 years old. See, Obituary of Clifford Currier, attached as  
 21 Exhibit D.

22      25. On Sunday, June 26, 2016, Clifford's family and friends attended his funeral  
 23 in Las Vegas, Nevada. Id.

24           C. Plaintiff's Subpoena to TIS for Documents and TIS' Person Most  
Knowledgeable Deposition

26      26. On Tuesday, June 28, 2016, Plaintiff issued a subpoena seeking TIS'  
 27 documents and commanding TIS' PMK deposition (hereinafter "the Subpoena"). See,  
 28 Plaintiff's Subpoena seeking TIS' Documents and Commanding TIS' PMK deposition,

1 attached as Exhibit E. The Subpoena contained a copy of a protection order (reciting  
 2 boilerplate language) issued in the underlying litigation between E-IMAGEDATA and ST  
 3 IMAGING. See, Certification of Records and copy of Protection Order, attached as  
 4 Exhibit F.

5       27. Upon information and belief, the Subpoena was served on Travis Currier in  
 6 Costa Mesa, California on Tuesday, July 5, 2016.

7       28. Plaintiff's subpoena commanded TIS to produce a wide range of documents  
 8 allegedly related to the underlying litigation. Some examples are:

- 9           a. Produce any documents relating to the camera resolution of any  
             ScanPro.
- 10          b. Produce any documents relating to the camera resolution of any  
             ViewScan.
- 11          c. Produce all promotional materials and documents used by you that  
             specifically references e-Image or any Scan Pro.
- 12          d. Produce documents relating to any sales made by TIS of any ViewScan  
             since January 1, 2013.
- 13          e. Produce any documents relating to any customer praise of the ScanPro  
             or ViewScan.
- 14          f. Produce any documents relating to e-Image's, ST Imaging's or any other  
             entity's market share for sales of microfilm scanners.
- 15          g. Produce any documents relating to industry sales data of microfilm  
             scanners.

16  
 17  
 18  
 19  
 20       See, Exhibit E at P. 8-9.<sup>4</sup>

21       29. TIS estimates the Subpoena as it is currently phrased will require Terri  
 22 Currier to review between 7,000 -10,000 pages of documentation covering matters that  
 23 pre-date the events leading to the underlying litigation between E-IMAGEDATA and ST  
 24 IMAGING. Terri Currier estimates this intensive document search will take 30-40 hours to  
 25 complete. See, Exhibit P.

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27       28       <sup>4</sup> The Requests for Production of Documents identified represent a small sample of Plaintiff's many  
             improper document requests as discussed in more detail below.

1       30. Plaintiff's subpoena commanded TIS to produce the above documents (and  
 2 many others) to US Legal Support, 575 Anton Boulevard, Suite 400, Costa Mesa,  
 3 California, 92626, "no later than July 11, 2016." Id. at P. 1. The Subpoena commanded  
 4 TIS' PMK appear at the above address to be deposed on August 11, 2016, at 9:00 a.m.

5       31. E-IMAGEDATA seeks to depose TIS' PMK on the following topics allegedly  
 6 related to the underlying litigation between E-IMAGEDATA and ST IMAGING:

- 7           • Documents produced in response to this Subpoena;
- 8           • Communications with third parties regarding e-Image or e-Image's  
             ScanPro product line;
- 9           • The market demand for products such as the ST ViewScan and the  
             Scan Pro, and product features driving that demand;
- 10          • Communications with customers or potential costumers regarding  
             St Imaging's ViewScan Products;
- 11          • The sales process associated with the sale of a ST ViewScan,  
             including communications with customers, communication with ST  
             Imaging, profit margins associated with the sale, costs associated  
             with the sale and documents associated with the sale.<sup>5</sup>

12       See, Exhibit E at P 5-6.

13       32. On July 8, 2016, TIS retained the undersigned counsel to represent them  
 14 regarding the Subpoena's document production and PMK deposition.

15       33. Rebecca Lindstrom, Esq., counsel for TIS located in Chicago and licensed  
 16 in Wisconsin conducted numerous conversations with Plaintiff's counsel from July 8 to  
 17 July 22, 2106 attempting to narrow the scope of the Subpoena. See, Communications  
 18 between TIS' counsel and Plaintiff's counsel, attached as Exhibits G, H, I and J.

19       34. On July 21, 2016, TIS' counsel (Affiant) and Plaintiff's counsel conducted  
 20 one last teleconference regarding the Subpoena's improper scope and TIS' PMK  
 21 deposition. See, Communication between TIS' counsel and Plaintiff's counsel dated July  
 22, 2016, attached as Exhibit K. TIS' counsel again advised Plaintiff's counsel about the  
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 27       <sup>5</sup> The above topics of examination reflect only few of the total topics Plaintiff seeks to examine TIS' PMK  
 28 about.

1 difficulty obtaining responsive documents given Clifford's sudden passing. Id. TIS  
 2 advised Plaintiff's counsel they would be willing to produce certain documents responsive  
 3 to the Subpoena provided TIS' counsel could redact customer information, potential  
 4 customer information, pricing information, profit information, etc. Plaintiff rejected TIS'  
 5 counsel's proposal, but suggested a willingness to grant TIS more time (without providing  
 6 any concrete dates) to respond to the Subpoena largely as issued. Id. TIS and Plaintiff's  
 7 counsel agreed they had reached impasse and judicial intervention was necessary. Id.

8       35. TIS' counsel documented the conversation with Plaintiff's counsel and e-  
 9 mailed Plaintiff's counsel a brief recitation of their conversation. Id. Plaintiff's counsel  
 10 disagreed with TIS' counsel characterization of their conversation. See, Communication  
 11 between TIS' counsel and Plaintiff's counsel dated July 21, 2016 attached as **Exhibit L**.  
 12 Plaintiff's counsel advised for the first time that they would be willing to grant TIS' counsel  
 13 an extension for the document production and the PMK deposition until November.  
 14 Plaintiff's counsel also advised TIS' counsel that Plaintiff was not seeking customer lists,  
 15 only customer and sales information that fell within the scope of the Subpoena. Plaintiff's  
 16 counsel also offered to consider adding language to the protective order in the underlying  
 17 litigation for TIS' protection. Id.

18       36. TIS' counsel responded to Plaintiff's "re-characterization" of their  
 19 communication a few hours later. TIS's counsel noted that Plaintiff's counsel's last  
 20 communication was Plaintiff's counsel first suggestion that TIS' counsel could have until  
 21 November to produce documents before responding to the Subpoena and giving  
 22 deposition testimony. See, Communication between TIS' counsel and Plaintiff's counsel  
 23 dated July 21, 2016 attached as **Exhibit M**. TIS' counsel also advised Plaintiff's counsel  
 24 that if TIS provided un-redacted customer information/potential customer information, E-  
 25 IMAGEDATA (TIS' competitor) would be able to "recreate" TIS' confidential  
 26 customer/pricing/profit information. TIS' counsel advised Plaintiff's counsel that Plaintiff's  
 27 willingness to provide additional protective order language did not address these problems in  
 28 Plaintiff's Subpoena. Lastly, TIS' counsel advised Plaintiff's counsel that Plaintiff's refusal

1 to narrow the scope of the Subpoena necessitated judicial intervention on a number of  
 2 issues beyond just trade secret concerns. Id.

3       37. Upon information and belief, Plaintiff has issued the Subpoena at issue (or a  
 4 subpoena substantially similar to the one at issue) to three (3) other ST IMAGING  
 5 resellers since the underlying case filing.

6       38. Attached hereto as **Exhibit A** is a true and correct copy of GAO's decision.

7       39. Attached hereto as **Exhibit B** is a true and correct copy of TIS Business  
 8 Entity Details for California.

9       40. Attached hereto as **Exhibit C** is a true and correct copy of TIS Business  
 10 Entity Details for Nevada.

11       41. Attached hereto as **Exhibit D** is a true and correct copy of Obituary of  
 12 Clifford Currier.

13       42. Attached hereto as **Exhibit E** is a true and correct copy of Plaintiff's  
 14 Subpoena seeking TIS' documents and commanding TIS' PMK deposition.

15       43. Attached hereto as **Exhibit F** is a true and correct copy of Certification of  
 16 Records and copy of a Protection Order.

17       44. Attached hereto as **Exhibit G** is a true and correct copy of the  
 18 Communication between TIS' counsel and Plaintiff's counsel dated July 8, 2016.

19       45. Attached hereto as **Exhibit H** is a true and correct copy of the  
 20 Communication between TIS' counsel and Plaintiff's counsel dated July 21, 2016.

21       46. Attached hereto as **Exhibit I** is a true and correct copy of the  
 22 Communication between TIS' counsel and Plaintiff's counsel dated July 18, 2016.

23       47. Attached hereto as **Exhibit J** is a true and correct copy of the  
 24 Communication between TIS's counsel and Plaintiff's Counsel dated July 21, 2016.

25       48. Attached hereto as **Exhibit K** is a true and correct copy of the  
 26 Communication between TIS' counsel and Plaintiff's counsel dated July 22, 2016.

27       49. Attached hereto as **Exhibit L** is a true and correct copy of the  
 28 Communication between TIS's counsel and Plaintiff's counsel dated July 22, 2016.

1       50. Attached hereto as Exhibit M is a true and correct copy of the  
2 Communication between TIS' counsel and Plaintiff's counsel dated July 22, 2016.

3       51. Attached hereto as Exhibit N is a true and correct copy of E-IMAGEDATA'S  
4 Second Amended Complaint against ST IMAGING.

5       52. Attached hereto as Exhibit O is a true and correct copy of ST IMAGING'S  
6 First Amended Counter-Claim against E-IMAGEDATA.

7       53. Attached hereto as Exhibit P is a true and correct copy of the Affidavit of  
8 Terri Currier dated July 25, 2016.

9 FURTHER AFFIANT SAYETH NAUGHT.

10      DATED this 25 day of July, 2016.

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14     BRANDON D. WRIGHT, ESQ.  
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SUBSCRIBED AND SWORN to before me

this 25<sup>th</sup> day of July, 2016.

Peggy Kurilla  
NOTARY PUBLIC in and for said  
County and State



1                   MEMORANDUM OF POINTS AND AUTHORITIES

2           I.        INTRODUCTION

3           A.        Background of the Parties in the Underlying Litigation

4           ST IMAGING manufactures technical equipment designed to read and "digitize"  
 5 aging microfilm, books and other "hard documents" housed primarily by educational  
 6 institutions, large private institutions, hospitals, etc. ST IMAGING works with and relies  
 7 on reselling companies (hereinafter "resellers") across the country to sell, service,  
 8 maintain and upgrade ST IMAGING'S equipment and products. E-IMAGEDATA also  
 9 manufactures technical equipment designed to read and "digitize" aging microfilm, books  
 10 and other hard documents. E-IMAGEDATA is ST IMAGING'S primary competitor, and  
 11 these two companies products comprise the vast majority of the total market share in the  
 12 microfilm reader industry.

13           E-IMAGEDATA has sold its ScanPro product line to the public since 2003. ST  
 14 IMAGING'S ST ViewScan product line directly competes with E-IMAGEDATA ScanPro  
 15 product line. E-IMAGEDATA advertises its ScanPro 3000 scanner as containing/utilizing  
 16 a 26 Megapixel Camera. ST IMAGING considers E-IMAGEDATA "26 Megapixel  
 17 Camera" claim to be false and misleading because E-IMAGEDATA uses a 6.6 megapixel  
 18 camera/image sensor and employs a proprietary hardware/software process to enhance  
 19 the image's resolution, rather than using a "true" 26 megapixel camera/image sensor.

20           E-IMAGEDATA and ST IMAGING have placed competing bids with various public  
 21 and private agencies/institutions throughout the years in order to sell their competing  
 22 products. E-IMAGEDATA has compared its ScanPro 3000's image quality against ST  
 23 IMAGING'S ViewScan III image (the ViewScan III uses a 14.3 megapixel camera/image  
 24 sensor) after employing E-IMAGEDATA'S proprietary hardware/software enhancement  
 25 process to ST IMAGING'S ViewScan III's unenhanced image.

26           ///

27           ///

28

1       E-IMAGEDATA protested a bid awarded to ST IMAGING by the Department of the  
 2 Interior, National Park Service (hereinafter "NPS") which required a scanner to have a 25  
 3 minimum megapixel camera/image sensor. E-IMAGEDATA and its resellers lodged a  
 4 formal protest of the award with the U.S. Government Accountability Office ("GAO")  
 5 alleging that E-IMAGEDATA'S ScanPro 3000 met the minimum megapixel requirement,  
 6 claiming it had a 26 megapixel camera. The GAO rejected E-IMAGEDATA'S claim that  
 7 its ScanPro 3000 had a 26 megapixel camera because E-IMAGEDATA "knew that the  
 8 ordinary convention in the industry was to represent camera megapixels in terms of the  
 9 camera sensor itself" excluding proprietary hardware/software enhancing techniques.

10 See, Exhibit A.

11       E-IMAGEDATA claims ST IMAGING provided false or misleading marketing  
 12 materials regarding E-EMAGEDATA ScanPro's 26 megapixel camera claim to its  
 13 resellers for distribution to the general public. ST IMAGING contends, interalia, that their  
 14 alleged statements and characterizations of E-IMAGEDATA 26 megapixel camera claims  
 15 are proper; that E-IMAGEDATA'S 26 megapixel camera representations are false and  
 16 misleading; and that E-IMAGEDATA has made false and disparaging statements about  
 17 ST IMAGING. E-IMGING and ST IMAGING have filed claims and counter-claims against  
 18 each other alleging violations of the Lanham Act (15 U.S.C. § 1125), claims of Common  
 19 Law Unfair Competition, Deceptive Trade Practices and other causes of action, in the  
 20 underlying litigation currently pending in the United States District Court for the Eastern  
 21 District of Wisconsin, Case Number 2:15-CV-658-RTR.

22           **B. Background Information About This Moving Non-Party**

23       TOTAL IMAGING SOLUTIONS, LLC., (TIS) is a reseller of ST IMAGING'S  
 24 products. The vast majority of TIS business comes from selling ST IMAGING'S  
 25 ScanView line of products. TIS was originally founded by Terri Currier and operated by  
 26 Clifford and Terri Currier as a husband and wife team. See, Exhibit P. Terri and Clifford  
 27 Currier later employed their son (Travis Currier) as a 1099 independent contractor. Id.  
 28 Travis works for TIS as an independent contractor in Southern California. Clifford and

1 Terri worked for TIS primarily in Nevada and northern California. Id. Clifford and Terri  
 2 shared in TIS' marketing and sales efforts throughout TIS' operation and expansion. Id.  
 3 TIS' business address is 4525 Dean Martin Dr., Unit 1508, Las Vegas, Nevada 89103.  
 4 This is reflected on both the California and Nevada Secretary of State's "entity information  
 5 center." See, Exhibits B and C. Travis is named as TIS' California "Registered Agent"  
 6 while Terri is identified as TIS' Nevada "Registered Agent" and "Managing Officer." Id.  
 7 Terri does not regularly conduct business, in person, within 100 miles of Costa Mesa,  
 8 California. On Saturday, June 18, 2016 Clifford Currier suddenly and unexpectedly  
 9 passed away. Clifford was 57 years old. See, Exhibit D. On Sunday, June 26, 2016,  
 10 Clifford's family and friends attended his funeral in Las Vegas, Nevada. Id.

11           C. Plaintiff's Subpoena to TIS for Documents and TIS' Person Most  
12           Knowledgeable Deposition

13           On Tuesday, June 28, 2016, Plaintiff issued a subpoena seeking TIS' documents  
 14 and commanding TIS' PMK deposition (hereinafter "the Subpoena"). See, Exhibit E.  
 15 The Subpoena contained a copy of a protection order (reciting boilerplate language)  
 16 issued in the underlying litigation between E-IMAGEDATA and ST IMAGING. See,  
 17 Exhibit F. The Subpoena was served on Travis Currier in Costa Mesa, California on  
 18 Tuesday, July 5, 2016. See, Exhibit P. Plaintiff's subpoena commanded TIS to produce  
 19 a wide range of documents (and trade secret information) allegedly related to the  
 20 underlying litigation. Some examples are:

- 21           a. Produce any documents relating to the camera resolution of any  
               ScanPro.
- 22           b. Produce any documents relating to the camera resolution of any  
               ViewScan.
- 23           c. Produce all promotional materials and documents used by you that  
               specifically references e-Image or any Scan Pro.
- 24           d. Produce documents relating to any sales made by TIS of any ViewScan  
               since January 1, 2013.
- 25           e. Produce any documents relating to any customer praise of the ScanPro  
               or ViewScan.

- 1                   f. Produce any documents relating to e-Image's, ST Imaging's or any other  
 2                   entity's market share for sales of microfilm scanners.  
 3                   g. Produce any documents relating to industry sales data of microfilm  
 4                   scanners.

5                  See, Exhibit E at P. 8-9.

6                  TIS estimates the Subpoena as it is currently phrased will require Terri Currier to  
 7                  review between 7,000 -10,000 pages of documentation covering matters that pre-date the  
 8                  events leading to the underlying litigation between E-IMAGIMG and ST IMAGING. Terri  
 9                  Currier estimates this intensive document search will take 30-40 hours to complete. See,  
 10                 Exhibit P. Plaintiff's subpoena commanded TIS to produce the above documents (and  
 11                 many others) to US Legal Support, 575 Anton Boulevard, Suite 400, Costa Mesa,  
 12                 California, 92626, "no later than July 11, 2016." *Id.* at P. 1.

13                 The Subpoena commanded TIS' PMK appear at the above address to be deposed  
 14                 on August 11, 2016, at 9:00 a.m. E-IMAGEDATA seeks to depose TIS's PMK on the  
 15                 following topics allegedly related to the underlying litigation between E-IMAGEDATA and  
 16                 ST IMAGING:

- 17                   • Documents produced in response to this Subpoena;
- 18                   • Communications with third parties regarding e-Image or e-Image's  
 19                   ScanPro product line;
- 20                   • The market demand for products such as the ST ViewScan and the  
 21                   Scan Pro, and product features driving that demand;
- 22                   • Communications with customers or potential costumers regarding  
 23                   St Imaging's ViewScan Products;
- 24                   • The sales process associated with the sale of a ST ViewScan,  
 25                   including communications with customers, communication with ST  
 26                   Imaging, profit margins associated with the sale, costs associated  
 27                   with the sale and documents associated with the sale.<sup>6</sup>

28                  See, Exhibit E at P 5-6.

29                 ///

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30                 <sup>6</sup> The above topics of examination reflect only few of the total topics Plaintiff seeks to examine TIS' PMK  
 31                 about.

1       On July 8, 2016, TIS retained the undersigned counsel to represent them  
 2 regarding the Subpoena's document production and PMK deposition. Rebecca  
 3 Lindstrom, Esq., counsel for TIS located in Chicago (licensed in Wisconsin) conducted  
 4 numerous conversations with Plaintiff's counsel from July 8 to July 22, 2106, attempting  
 5 to narrow the scope of the Subpoena. See, Communications between TIS' counsel and  
 6 Plaintiff's counsel, attached as Exhibits G, H, I and J.

7       On July 22, 2016, TIS' counsel (Affiant) and Plaintiff's counsel conducted one last  
 8 teleconference regarding the Subpoena's improper scope and TIS' PMK deposition. See,  
 9 Exhibit K. TIS' counsel again advised Plaintiff's counsel about the difficulty obtaining  
 10 responsive documents given Clifford's sudden passing. Id. TIS' counsel advised  
 11 Plaintiff's counsel they would be willing to produce certain documents responsive to the  
 12 Subpoena provided TIS' counsel could redact customer information, potential customer  
 13 information, pricing information, profit information, etc. Plaintiff's counsel rejected TIS'  
 14 counsel's proposal, but suggested a willingness to grant TIS more time (without providing  
 15 any concrete dates) to respond to the Subpoena largely as issued. Id. TIS and Plaintiff's  
 16 counsel agreed they had reached impasse and judicial intervention was necessary. Id.

17       TIS' counsel documented the conversation with Plaintiff's counsel and e-mailed  
 18 Plaintiff's counsel a brief recitation of their conversation. Id. Plaintiff's counsel disagreed  
 19 with TIS' counsel characterization of their conversation. See, Exhibit L. Plaintiff's  
 20 counsel advised for the first time that they would be willing to grant TIS' counsel an  
 21 extension for the document production and the PMK deposition until November.  
 22 Plaintiff's counsel also advised TIS' counsel that Plaintiff was not seeking customer lists,  
 23 only customer and sales information that fell within the scope of the Subpoena. Plaintiff's  
 24 counsel also offered to consider adding language to the protective order in the underlying  
 25 litigation for TIS' protection. Id.

26       TIS' counsel responded to Plaintiff's "re-characterization" of their communication a  
 27 few hours later. TIS's counsel noted that Plaintiff's last communication was Plaintiff's first  
 28 suggestion that TIS' counsel could have until November to produce documents before

1 responding to the Subpoena and giving deposition testimony. See, Exhibit M. TIS'  
 2 counsel also advised Plaintiff's counsel that if TIS provided un-redacted customer  
 3 information/potential customer information, E-IMAGEDATA (TIS' competitor) would be  
 4 able to "recreate" TIS' confidential customer/pricing/profit information. TIS' counsel  
 5 advised Plaintiff's counsel that Plaintiff's willingness to provide additional protective order  
 6 language did not address these problems in Plaintiff's Subpoena. Lastly, TIS' counsel  
 7 advised Plaintiff's counsel that Plaintiff's refusal to narrow the scope of the Subpoena  
 8 necessitated judicial intervention on a number of issues beyond just trade secret  
 9 concerns. Id.

10 The Subpoena is improper for a host of reasons discussed in more detail below.  
 11 Plaintiff should not be permitted to force a corporate officer to expend significant time and  
 12 resources to produce confidential documents that pre-date relevant matters in the  
 13 underlying litigation, when they could get the information from ST IMAGING (the  
 14 Defendant) or another reseller (Plaintiff has issued the exact same subpoena or one  
 15 substantial similar to three other ST IMAGING resellers). Plaintiff should not be allowed  
 16 to compel Terri Currier to attend a deposition in Costa Mesa, California (more than twice  
 17 the permissible distance under FRCP 45) regarding irrelevant, overbroad and trade  
 18 secret information when she does not regularly conduct business within 100 miles of  
 19 Costa Mesa. See, Exhibit P. Consequently, this Court should quash the subpoena or, at  
 20 a minimum, significantly modify its scope and change the location to Las Vegas, Nevada.

21 II. LEGAL STANDARD

22 Federal Rule of Civil Procedure 45(d)(3) governs motions to quash or modify a  
 23 subpoena. Once a recipient of a subpoena has moved to quash the subpoena, it may  
 24 refuse to comply with the subpoena until the motion to quash is decided. See, Pennwalt  
25 Corp. v. Durand-Wayland, Inc., 708 F.2d 492, 494 (9th Cir. 1983). FRCP 45(d)(3)(A)  
 26 identifies circumstances in which a Court is required to grant a motion to quash (or  
 27 modify) a subpoena (in the district where compliance is required) including when:

28 ///

- 1                   (1) The Subpoena fails to allow a reasonable time to comply;
- 2                   (2) The Subpoena requires a person to comply beyond the  
geographical limits specified in Rule 45(c) [100 miles];
- 3                   (3) The Subpoena requires disclosure of privileged or other protected  
matters, if no exception or waiver applies; or
- 4                   (4) The Subpoena subjects a person to undue burden.

5 FRCP 45(d)(3)(A).

6                   FRCP 45(d)(3)(A) contrasts with Rule 45(d)(3)(B), which identifies circumstances  
7 were a subpoena should be quashed or modified including when:

- 8                   (1) The Subpoena requires disclosing a trade secret or other confidential  
research, development, or commercial information.

9 FRCP 45(d)(3)(A)(i).

10                  FRCP 45(d)(3)(C) describes circumstances where the court may order appearance  
11 or production under specified conditions when the serving party:

- 12                  (1) Shows a substantial need for the testimony or material that cannot be  
otherwise met without undue hardship; and
- 13                  (2) Ensures that the subpoenaed person will be reasonably compensated.

14 FRCP 45(d)(3)(C) (emphasis added).

15                  Federal Rule of Civil Procedure 26 is also relevant in the instant matter because it  
16 defines the permissible scope of discovery, and a Rule 45 subpoena is subject to that  
17 same scope. See, Fed. R. Civ. P. 45(d)(1) advisory committee's note to the 1970  
18 Amendment; see also, e.g., Transcor, Inc. v. Furney Charters, Inc., 212 F.R.D. 588, 591  
19 (D. Kan. 2003) ("[i]n considering a motion to quash a subpoena duces tecum, the court  
20 must also consider whether the subpoena "is overly broad or seeking irrelevant  
21 information under the same standards set forth in Rule 26(b)").

22                  The Federal Rules of Civil Procedure generally allow for broad discovery,  
23 authorizing parties to obtain discovery regarding "any non-privileged matter that is  
24 relevant to any party's claim or defense." See, Fed. R. Civ. P. 26(b)(1). Also, "[f]or good  
25 cause, the court may order discovery of any matter relevant to the subject matter involved

1 in the action." *Id.* This traditional "relevance" standard, however, does not apply to  
 2 nonparties. See, Dart Indus. Co. v. Westwood Chem. Co., 649 F.2d 646, 649 (9th Cir.  
 3 1980) ("While discovery is a valuable right and should not be unnecessarily restricted . . .  
 4 the 'necessary' restriction may be broader when a nonparty is the target of discovery.");  
 5 see also, e.g., Laxalt v. McClatchy, 116 F.R.D. 455, 458 (D. Nev. 1986) ("The standards  
 6 for nonparty discovery . . . require a stronger showing of relevance than for simple party  
 7 discovery."). To obtain discovery from a nonparty, a party must demonstrate that its need  
 8 for discovery outweighs the nonparty's interest in nondisclosure. See, e.g., Slater Steel,  
 9 Inc. v. Vac-Air Alloys Corp., 107 F.R.D. 246, 248 (W.D.N.Y. 1985) (granting a nonparty's  
 10 motion because the nonparty demonstrated that the information sought was a highly  
 11 confidential commercial matter and that disclosure would cause it significant harm).

12 FRCP 26(b)(2)(C) also requires courts to limit discovery where "the discovery  
 13 sought is unreasonably cumulative or duplicative, or can be obtained from some other  
 14 source that is more convenient, less burdensome, or less expensive" and where "the  
 15 burden or expense of the proposed discovery outweighs its likely benefit, considering . . .  
 16 the importance of discovery in resolving the issues." Fed. R. Civ. P. 26(b)(2)(C)(i)–(iii).

17 Knowledgeable

18 III. LEGAL ARGUMENT

19 A. Plaintiff's Subpoena Commanding TIS' PERSON MOST  
 20 KNOWLEDGEABLE Deposition Should be Quashed Pursuant to FRCP  
 21 45(C) Because Costa Mesa, California is More than 100 Miles From TIS  
and Terri Currier Does Not Personally Regularly Conduct Business Within  
100 Miles of Costa Mesa, California

22 The pertinent part of Rule 45(c) provides that a subpoena may command a person  
 23 to appear for a deposition or to produce documents within 100 miles of where the person  
 24 resides, is employed or regularly transacts business in person. See, FRCP 45(c)  
 25 (emphasis added). Costa Mesa, California is approximately 264 miles away from Las  
 26 Vegas, Nevada. TIS resides in Las Vegas, Nevada. TIS' only remaining corporate officer  
 27 and PMK Terri Currier resides in Las Vegas, Nevada. Terri Currier's does regularly

1 conduct business, in person, within 100 miles of Costa Mesa, California. Compliance  
 2 with the Subpoena as issued would improperly require Terri Currier TIS' only cooperate  
 3 officer to travel more than twice the permissible distance under FRCP 45(c) to appear for  
 4 a deposition that improperly seeks irrelevant and trade secret information.<sup>7</sup>  
 5 Consequently, the Court should quash the Subpoena commanding Terri Currier to appear  
 6 in Costa Mesa, California for TIS' PMK deposition.

7       B. Plaintiff's Subpoena Commanding TIS' PMK Deposition Should be  
Quashed Because it Seeks Irrelevant and Trade Secret Information

9           The Federal Rules of Civil Procedure generally allow for broad discovery,  
 10 authorizing parties to obtain discovery regarding "any non-privileged matter that is  
 11 relevant to any party's claim or defense." See, Fed. R. Civ. P. 26(b)(1) (emphasis  
 12 added). The traditional "relevance" standard, however, does not apply to nonparties.  
 13 See, Dart Indus. Co. v. Westwood Chem. Co., 649 F.2d 646, 649 (9th Cir. 1980). To  
 14 obtain non-privileged discovery from a nonparty, the party must demonstrate that its need  
 15 for discovery outweighs the nonparty's interest in nondisclosure. See, e.g., Slater Steel,  
 16 Inc. v. Vac-Air Alloys Corp., 107 F.R.D. 246, 248 (W.D.N.Y. 1985). FRCP 26(b) also  
 17 requires courts to limit discovery where "the discovery sought is unreasonably cumulative  
 18 or duplicative, or can be obtained from some other source that is more convenient, less  
 19 burdensome, or less expensive" and where "the burden or expense of the proposed  
 20 discovery outweighs its likely benefit, considering . . . the importance of discovery in  
 21 resolving the issues." Fed. R. Civ. P. 26(b)(2)(C)(i)–(iii).

22           The underlying litigation between E IMAGING and ST IMAGING involves claims  
 23 about each others products' capabilities and related advertising activities. See, Exhibits  
 24 N and O. Plaintiff, however, seeks TIS' PMK deposition testimony on:

25       ///

---

27       <sup>7</sup> The below "topics of examination" represent a sample of the improper nature of the Subpoena's scope  
 28 TIS' PMK'S deposition.

- 1     • Documents produce in response to this Subpoena;
- 2     • Communication with third parties regarding e-Image or e-Image's
- 3         ScanPro product line;
- 4     • The market demand for products such as the ST ViewScan and the
- 5         Scan Pro, and product features driving that demand;
- 6     • Communication with customers or potential costumers regarding
- 7         ST Imaging's ViewScan Products;
- 8     • he sales process associated with the sale of a ST ViewScan,
- 9         including communications with customers, communication with ST
- 10      Imaging, profit margins associated with the sale, costs associated
- 11      with the scale and documents associated with the sale.

9 See, Exhibit E at P. 5-6.

10     TIS has been in business since 2001. See, Exhibit P. E-IMAGEDATA'S ScanPro  
 11 product line has been around since 2003. See, Exhibits N and O. TIS has sold ST  
 12 IMAGING'S ViewScan products since 2004. See Exhibit P. Plaintiff's deposition request  
 13 seeks information that pre-dates E-IMAGEDATA'S 26 megapixel claim is irrelevant to the  
 14 underlying litigation between E-IMAGEDATA and ST IMAGING, and requires disclosure  
 15 of confidential customer and sales and profit information to TIS' competitor. Moreover,  
 16 TIS's internal market research regarding market demand, sales and profit information and  
 17 "product features driving that demand" are entirely irrelevant and inappropriate to discuss  
 18 with TIS' competitor given the nature of the underlying dispute.

19     E-IMAGEDATA and ST IMAGING likely have extensive documentation tracking  
 20 product demand, market research and provide/sales margins. This Court should quash  
 21 the Subpoena seeking to depose TIS' PMK in Costa Mesa, California. If this Court is not  
 22 inclined to quash Plaintiff's improper Subpoena, this Court should significantly limit its  
 23 scope to relevant issues in the underlying litigation provided Plaintiff has demonstrated  
 24 the need for TIS' disclosure outweighs TIS need for privacy and Plaintiff cannot  
 25 reasonably obtain the information from another more reasonable non-duplicative source.  
 26 TIS does not believe Plaintiff will be able to meet their burden, as information regarding  
 27 the advertising at issue can be obtain from ST IMAGING and Plaintiff has sent three (3)  
 28 identical (or substantially similar) Subpoenas to three (3) other ST IMAGING resellers.

1           C. The Subpoena's Document Production Request Should be Quashed or  
 2           Modified Because its Overly Broad, Unduly Burdensome and Improperly  
 3           Seeks Trade Secret Information

4           The permissible breadth of a subpoena duces tecum is measured by the scope of  
 5           the problem under investigation. See, People v Allen, 103 NE2d 92 (1951), cert. den.  
 6           (1952) 344 US 815, 97 L Ed 635, 73 S Ct 9. Whether a subpoena imposes an undue  
 7           burden on a witness requires a case-specific analysis. See, American Elec. Power Co. v  
 8           United States 191 FRD 132, 85 AFTR 2d 345 (1999, SD Ohio). FRCP 45(c), which  
 9           delineates circumstances justifying quashing subpoenas, was not intended to diminish  
 10          rights conferred by FRCP 27-37; accordingly, factors to be considered in an undue  
 11          burden analysis include relevance, the need of the party for the documents, whether the  
 12          request is cumulative and duplicative, the time and expense required to comply with the  
 13          subpoena, and the importance of the issues at stake in litigation. See, Linder v Calero-  
 14          Portocarrero 183 FRD 314 (1998, DC Dist Col), affrd (2001, App DC) 346 US App DC  
 15          117, 251 F3d 178, 49 FR Serv 3d 757. Courts are required to balance the need for  
 16          discovery against the burden imposed on person ordered to produce documents, and the  
 17          status of a person as a nonparty is factor that weighs against disclosure. See, American  
 18          Elec. Power Co. at 191 FRD 132, 85 AFTR 2d 345 (1999, SD Ohio) (emphasis added).

19           1. Plaintiff's Subpoena's Should be Quashed or Modified Because the  
 20           Documents Requested are Impermissibly Overly Broad and Unduly  
 21           Burdensome

22           The Court has broad discretion in determining whether discovery is burdensome  
 23          and/or oppressive. See, Little v. City of Seattle, 863 F.2d 681, 685 (9th Cir. 1988). The  
 24          Court may make any order which justice requires to protect a party or person from undue  
 25          burden, oppression or expense. See, United States v. Columbia Broadcasting System,  
 26          Inc., 666 F.2d 364, 369 (9th Cir.), cert. denied 457 U.S. 1118, 102 S.Ct. 2929, 73 L.Ed.2d  
 27          1329 (1982); see also, Diamond State Ins. Co. v. Rebel Oil Co., 157 F.R.D. 691, 696 (D.  
 28          Nev. 1994). Requests are over broad when they used language so broad it is impossible  
 29          to determine what amongst numerous documents fall within the scope of the requests.  
 30          See, Krause v. Nevada Mut. Ins. Co., No. 2:12-CV-00342-JCM, 2014 WL 496936, at \*5

1 (D. Nev. Feb. 6, 2014) aff'd, No. 2:12-CV-342 JCM CWH, 2014 WL 3592655 (D. Nev.  
 2 July 21, 2014) (citing Dauska v. Green Bay Packaging Inc., 291 F.R.D. 251 (E.D. Wisc.  
 3 2013)).

4 The underlying litigation between E IMAGING and ST IMAGING involves claims  
 5 about their equipment capabilities and related advertising materials. Plaintiff issued a  
 6 Subpoena to TIS seeking:

- 7 a. Produce any documents relating to the camera resolution of any  
     ScanPro.
- 8 b. Produce any documents relating to the camera resolution of any  
     ViewScan.
- 9 c. Produce all promotional materials and documents used by You  
     that specifically references e-Image or any Scan Pro.
- 10 d. Produce documents relating to any sales made by TIS of any  
     ViewScan since January 1, 2013.
- 11 e. Produce any documents relating to any customer praise of the  
     ScanPro or ViewScan.
- 12 f. Produce any documents relating to e-Image's, ST Imaging's or  
     any other entity's market share for sales of microfilm scanners.
- 13 g. Produce any documents relating to industry sales data of  
     microfilm scanners.

14  
 15 See, Exhibit E at P. 5-6 (emphasis added).

16 The Subpoena's many requests seek irrelevant information (documents that pre-  
 17 date matters disputed in the underlying litigation) and are overly broad and unduly  
 18 burdensome on its face. The underlying litigation involves claims of alleged false  
 19 statements/advertising between E-IMAGEDATA and ST IMAGING. Plaintiff's request for  
 20 industry sales data and TIS' internal market share analysis have no bearing on the instant  
 21 matter. More importantly, the documents can be obtained likely be obtained from ST  
 22 IMAGING, the Defendant. Consequently this Court should quash Plaintiff's many  
 23 improper requests for TIS documents.

24           ///

25           ///

1 The Court should also quash or narrow the scope of Plaintiff's many document  
2 requests because they are unlimited in time and scope and unduly burdensome.  
3 Plaintiff's request for documents "related to" broad categories of general concepts (e.g.  
4 "camera resolution") are overly broad and unduly burdensome on their face. Plaintiff's  
5 request for TIS documents (as issued) places an undue burden on TIS.

6 TIS has been selling ViewScan products since 2004. E-IMAGEDATA has  
7 produced its ScanPro line since 2003. Complying with the Subpoena's unlimited request  
8 as issued would involve Terri Currier's review of 7,000-10,000 pages of documentation  
9 requiring 30-40 hours of review time. See, Exhibit P. Plaintiff's demand that TIS' only  
10 corporate representative invest this amount of time to comb through thousands of pages  
11 of documents covering more than 10 years of documentation is unduly burdensome and  
12 oppressive. Consequently, this Court should quash or significantly narrow the  
13 Subpoena's scope.

2. Plaintiff's Subpoena's Should be Quashed or Modified Because it Impermissibly Seeks Confidential, Trade Secret Information

16 Trade secrets are governed by state specific law. Nevada and Wisconsin's  
17 definitions of trade secrets are essentially identical, as both states have enacted the  
18 Uniform Trade Secrets Act and regard the Restatement of Torts as persuasive authority  
19 on the issue.<sup>8</sup> NRS 600A.030(5)(a)-(b) defines "trade secrets." Under Nevada Law, trade  
20 secrets are:

[i]nformation, including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that:

23 (a) Derives independent economic value, actual or potential, from not  
24 being generally known to, and not being readily ascertainable by proper  
means by the public or any other persons who can obtain commercial or  
economic value from its disclosure or use; and

<sup>8</sup> See, Wis. Stat §134.90; see also, NRS 600A.030(5)(a)-(b), Am. Nat'l Prop. & Cas. Co. v. Brass, 305 Wis. 2d 655 (Ct. App. 2007).

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

See, NRS 600A.030(5)(a)-(b).

Whether information is “trade secret” is generally a question of fact. See, Frantz v. Johnson, 116 Nev. 455, 466, 999 P.2d 351, 358 (2000). Factors to consider typically include:(1) the extent to which the information is known outside of the business and the ease or difficulty with which the acquired information could be properly acquired by others; (2) whether the information was confidential or secret; (3) the extent and manner in which the employer guarded the secrecy of the information; and (4) the former employee's knowledge of customer's buying habits and other customer data and whether this information is known by the employer's competitors. See, Finkel v. Cashman Prof'l, Inc., 270 P.3d 1259, 1264 (Nev. 2012). When analyzing whether to order disclosure of trade secret information the Court, using its common sense, must balance one party's legitimate desire for discovery with other party's legitimate fear of financial ruin arising out of that disclosure. See, Mycogen Plant Science v Monsanto Co. 164 FRD 623 (1996, ED Pa) (emphasis added).

17 This underlying litigation involves accusation of false statements and advertising  
18 between two competing microfilm scanner manufactures. But in the Subpoena, Plaintiff  
19 seeks TIS' confidential customer names; potential customer names; focused  
20 communications to current and potential customers; internal market research; sales/profit  
21 information; etc. See, Exhibit E. This information falls squarely within  
22 Nevada/Wisconsin's definition of trade secret information because it has economic value,  
23 it is not generally available and TIS has sought to protect this information from others.  
24 The Court should preclude disclosure of TIS' trade secret information as TIS' interest in  
25 disclosure far outweighs Plaintiff's need for the information/documents to support their

1 case.<sup>9</sup>

2 As a reseller, customer information, potential customer information, profit/sales  
3 information and market research is TIS' economic "life blood." TIS has gone through  
4 great measures to keep this information confidential. TIS does not publish information  
5 about its clients and does not discuss profit/sales information, marketing strategy and  
6 ways to acquire new clients with others outside the company. The Subpoena (issued by  
7 TIS' competitor) is the only such subpoena TIS has ever received for trade secret and  
8 protective information and strongly objects to producing its confidential/trade secret  
9 information. Plaintiff's need for TIS' confidential information does not outweigh TIS fear of  
10 (and likely) financial ruin arising out of disclosing these documents. Consequently, the  
11 Court should quash Plaintiff's Subpoena.

12 **IV. CONCLUSION**

13 Predicated upon the foregoing, non-party TOTAL IMAGING SOLUTIONS, LLC.  
14 respectfully requests that the Court quash the Subpoena issued by E-IMAGEDATA.

15 DATED this 25 day of July, 2016

16 Respectfully Submitted,

17 LEWIS BRISBOIS BISGAARD & SMITH LLP

18 By

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20 Attorneys for Non-Party  
21 TOTAL IMAGING SOLUTIONS, LLC.  
22  
23  
24  
25  
26

27 <sup>9</sup> TIS again notes Plaintiff issued essentially the same Subpoena at issue to three (3) other ST IMAGING  
28 resellers rendering TIS' likely production duplicative.

**CERTIFICATE OF SERVICE**

I hereby certify that, on July 25, 2016, I electronically filed NON-PARTY TOTAL IMAGING SOLUTIONS, LLC'S. MOTION TO QUASH SUBPOENA SEEKING DOCUMENTS AND PMK DEPOSITION OR, IN THE ALTERNATIVE, TO MODIFY SUBPOENA'S SCOPE with the Clerk of Court using the CM/ECF system which will automatically send E-Mail notification of such filing to the following attorneys of record:

7 MATHEW J. Duchemin  
Wisconsin State Bar No. 1027594  
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33 East Main St. Suite 900  
9 Madison, WI 53703  
10 P. 608-251-500  
  
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By

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